



2. On June 29, 2000, the taxpayer wrote a letter to the Department in which it told the Department that in May and June of 2000 the taxpayer sold dyed diesel fuel for use in watercraft. (Dept. Ex. #3)

3. On February 15, 2001, the Department inspected the taxpayer's business and found that on May 6, May 16, May 26, and June 19 of 2000 the taxpayer sold dyed diesel fuel to Marina for use in recreational boats. (Dept. Ex. #2)

4. On February 15, 2001, the Department also determined that one of the taxpayer's dyed diesel fuel tanks and one of its shipping papers did not have dyed diesel fuel notices on them. (Dept. Ex. #2)

5. On March 30, 2001, the Department issued a Notice of Penalty for Motor Fuel Tax to the taxpayer for failing to display the notice "Dyed Diesel Fuel, Non-taxable Use Only, Penalty for Taxable Use" on its shipping papers, bills of lading, or invoices for the sale or transportation of dyed diesel fuel on February 15, 2001. (Dept. Ex. #1)

6. On March 30, 2001, the Department issued a Notice of Penalty for Motor Fuel Tax to the taxpayer for failing to display the notice "Dyed Diesel Fuel, Non-taxable Use Only" on its container, storage tank, or facility for dyed diesel fuel on February 15, 2001. (Dept. Ex. #1)

7. On March 30, 2001, the Department issued four Notices of Penalty for Motor Fuel Tax to the taxpayer for selling or attempting to sell dyed diesel fuel for use on highways. (Dept. Ex. #1)

8. When the taxpayer makes a sale of dyed diesel fuel, it gives a sales invoice to the customer that includes the language "Dyed diesel fuel, nontaxable use, penalty for taxable use." The taxpayer does not use bills of lading. (Tr. p. 18)

9. When the taxpayer sells dyed diesel fuel, it also prepares a transaction ticket that transfers inventory from one center of the company to another. The ticket is used for inventory control and does not accompany the sale of the fuel to the customer. The ticket does not contain the dyed diesel fuel notice on it. (Taxpayer Ex. #1; Tr. pp. 16-17)

10. The taxpayer did not present any evidence concerning the alleged failure to place a notice on its container, storage tank, or facility for dyed diesel fuel.

CONCLUSIONS OF LAW:

Section 4e of the Motor Fuel Tax Law (35 ILCS 505/1 *et seq.*) provides as follows:

“A legible and conspicuous notice stating “Dyed Diesel Fuel, Non-taxable Use Only, Penalty for Taxable Use” must appear on all shipping papers, bills of lading, and invoices accompanying any sale of dyed diesel fuel.” (emphasis added; 35 ILCS 505/4e)

Subsection 13 of Section 15 of the Motor Fuel Tax Law provides in part as follows:

“13. Any person who sells or transports dyed diesel fuel without the notice required by Section 4e shall pay the following penalty:

First occurrence.....\$ 500  
Second and each occurrence thereafter.....\$1,000” (35 ILCS 505/15)

Section 4f of the Motor Fuel Tax Law provides as follows:

“A legible and conspicuous notice stating “Dyed Diesel Fuel, Non-taxable Use Only, Penalty for Taxable Use” must appear on all containers, storage tanks, or facilities used to store or distribute dyed diesel fuel.” (35 ILCS 505/4f)

Subsection 14 of Section 15 of the Act provides as follows:

“14. Any person who owns, operates, or controls any container, storage tank, or facility used to store or distribute dyed diesel fuel without the notice required by Section 4f shall pay the following penalty:

First occurrence.....\$ 500  
Second and each occurrence thereafter.....\$1,000” (35 ILCS 505/15)

Subsection 16 of Section 15 of the Motor Fuel Tax Law, which became effective January 1, 2000, provides in part as follows:

“16. Any licensed motor fuel distributor or licensed supplier who sells or attempts to sell dyed diesel fuel for highway use shall pay the following penalty:

First occurrence.....\$ 5,000  
Second and each occurrence thereafter.....\$10,000

(35 ILCS 505/15).

Both the Department and the taxpayer have noted that Subsection 16 of Section 15 was amended effective August 2, 2001 and currently reads as follows:

“16. Any licensed motor fuel distributor or licensed supplier who sells or attempts to sell dyed diesel fuel for highway use or for use by recreational-type watercraft on the waters of this State shall pay the following penalty:

First occurrence.....\$ 5,000  
Second and each occurrence thereafter.....\$10,000

(35 ILCS 505/15 (emphasis added)).

The Department argues that Subsection 16 of Section 15 that was in effect during 2000 requires imposition of a penalty for the sale of dyed diesel fuel for use in recreational boats. The Department argues that the amendment that added the words “for use by recreational-type watercraft on the waters of this State” was simply a further explanation of the types of uses that would result in a penalty. The Department notes that the statute has always prohibited the use of dyed diesel fuel in recreational watercraft, and therefore the penalty provision should be construed to penalize what the statute has always prohibited.

The taxpayer argues that at the time that it sold dyed diesel fuel for use in recreational boats, the penalty provision only applied to the sale of dyed diesel fuel for highway use and not use on waterways. After the hearing was held in this matter, the taxpayer submitted a copy of the Senate Transcript concerning the amendment that is at issue in this case. Senator Peterson commented on the proposed bill as follows:

“It [the bill] has two main provisions. The first is, the current law forbids use of dyed diesel fuel in recreation-type watercraft on waters of the State but does not contain penalties for failure to comply. This bill -- bill corrects that oversight.” (92<sup>nd</sup> General Assembly Regular Session Senate Transcript, March 27, 2001, p. 37)

The taxpayer argues that this indicates that prior to August 2001, there was no penalty provision for the sale of dyed diesel fuel for use in recreational boats. Because the taxpayer’s sales were made prior to the amendment, the taxpayer claims that these penalties should be dismissed.

The taxpayer’s arguments are persuasive. The Senator’s comments reveal that the purpose of the amendment was to correct an error in the law in that it prohibited the sale of dyed diesel fuel for use on waterways but did not impose a correlating penalty. The penalty provision that was in effect at the time the taxpayer made the sales only applied to sales for highway use and not use on waterways. The penalties that were imposed for these sales should therefore be dismissed.

With respect to the penalty for the failure to display the notice “Dyed Diesel Fuel, Non-taxable Use Only, Penalty for Taxable Use” on its shipping papers, bills of lading, or invoices, the taxpayer presented evidence that the document for which the Department imposed the penalty did not accompany the sale of the fuel. The document that did not contain the notice was a “transaction ticket” that is used for internal purposes only. The penalty only applies when

documents that accompany the sale of dyed diesel fuel do not display the required notice. Because the transaction ticket did not accompany the sale of the fuel, the penalty does not apply.

The final penalty concerns the failure to display the notice “Dyed Diesel Fuel, Non-taxable Use Only” on the taxpayer’s container, storage tank, or facility for dyed diesel fuel. The taxpayer did not present any evidence to dispute the Department’s prima facie case on this issue, and therefore this penalty should be upheld.

Recommendation:

For the foregoing reasons, it is recommended that the penalties for selling dyed diesel fuel for use on highways be abated. Also, the penalty for failing to display the required notice on the taxpayer’s shipping papers should be abated. The penalty for failing to display the notice on the storage tank should be upheld.

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Linda Olivero  
Administrative Law Judge

Enter: November 30, 2001